

No. 25-115

IN THE
Supreme Court of the United States

MONICA MILLER, et al.,
Petitioners,

v.

LETITIA JAMES, Individually and in Her Official
Capacity as Attorney General of New York,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Petitioners are two individuals who assert that New York Attorney General Letitia James violated their constitutional rights and defamed them during a press conference in June 2023 when she referred to an organization of which petitioners are members as a terrorist group, without either naming petitioners or referring to any acts they had committed. The district court dismissed petitioners' complaint and the Second Circuit affirmed.

The questions presented are:

1. Do petitioners' federal constitutional claims fail because they have not plausibly alleged that the Attorney General's comments caused reputational harm sufficient to establish standing to raise those claims, when the comments on which they rely neither mentioned petitioners by name nor referred to any of their actions?
2. Does petitioners' state law defamation claim fail because the Attorney General's comments were statements of opinion which cannot support a defamation claim under New York law?

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INTRODUCTION

Petitioners Monica Miller and Suzanne Abdalla are members of Red Rose Rescue, an anti-abortion group. In June 2023, Attorney General James filed a civil action against Red Rose Rescue and five of its members (not including petitioners) alleging violations of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248(a)(1), and the New York Clinic Access Act, N.Y. Penal Law § 240.70(1)(a)-(b). During the press conference at which she announced this civil action, the Attorney General referred to Red Rose Rescue as a terrorist group because of the tactics used by some of its members at reproductive health clinics in New York, including blockading clinics, invading waiting areas, and placing super-glued locks on entrances. Petitioners brought this lawsuit alleging that the Attorney General's statements violated their First and Fourteenth Amendment rights under 42 U.S.C. § 1983 and constituted defamation under New York State law. The district court dismissed the constitutional claims for lack of standing and the defamation claim for failure to state a claim. The Second Circuit affirmed.

The Court should deny the petition for certiorari. Neither of the questions presented by petitioners warrants this Court's review. First, as to petitioners' claim that the statements had the purpose and effect of chilling their First Amendment free speech rights, the Second Circuit held that petitioners failed to plausibly allege reputational harm so as to establish standing to make that claim. The Second Circuit's case-specific application of well settled law does not warrant this Court's review. Nor do petitioners show any conflict between the Second Circuit's decision and authority from this Court or other circuits. Second, the Second

Circuit's holding that petitioners failed to state a defamation claim under New York law presents no federal question for this Court to review.

STATEMENT

1. In June 2023, Attorney General James filed a civil action against Red Rose Rescue and five of its members in the U.S. District Court for the Southern District of New York. The complaint in that action alleged violations of the federal Freedom of Access to Clinic Entrances (FACE) Act, 18 U.S.C. § 248(a)(1), and the New York Clinic Access Act, N.Y. Penal Law § 240.70(1)(a)-(b). Neither of the petitioners here was named as a defendant in that civil action, though the complaint mentions petitioner Miller and 31 others as individuals affiliated with Red Rose Rescue who have obstructed access to reproductive health clinics in various States.

The Attorney General held a press conference regarding this civil action on June 8, 2023. During that press conference, the Attorney General discussed three incidents in which members of Red Rose Rescue obstructed access to reproductive health clinics in New York. First, on April 4, 2021, several individuals unlawfully entered All Women's Care in Manhasset, New York, occupied the waiting room, and refused to leave. Second, on November 27, 2021, several individuals unlawfully entered All Women's Health and Medical Services in White Plains, New York, refused to leave unless the clinic agreed to cease performing abortions, and had to be carried out by police officers. And third, on July 7, 2022, a member of Red Rose Rescue locked entrances to a Planned Parenthood clinic in Hempstead, New York, prevented cars from entering the parking lot,

and had to be carried away by police officers. None of these incidents involved petitioners.

The Attorney General described these incidents as examples of Red Rose Rescue members “threatening staff and clinicians and terrorizing patients.” At the Manhasset clinic, the Attorney General stated, Red Rose Rescue “terrorized patients waiting for their appointments,” some of whom feared for their lives. Similarly, the Attorney General referred to individuals who “terrorize[d] the clinic” in White Plains. The Attorney General further stated that it is her “responsibility to keep individuals safe from terrorists. And that’s what they are.” While the Attorney General called Red Rose Rescue “a terrorist group,” she also made clear that it was not formally designated as such. Rather, she “refer[red] to them as terrorists because of their activities.” The Attorney General did not name either of the petitioners during the press conference.

The Attorney General’s civil action remains pending. In December 2023, the district court (Karas, J.) granted the Attorney General’s motion for a preliminary injunction and enjoined the defendants from being within 15 feet of the entrances to certain reproductive health facilities with the intent to injure, intimidate, or interfere with any person who is or has been obtaining or providing reproductive health services. *See Order, New York ex rel. James v. Red Rose Rescue*, No. 7:23-cv-4832 (S.D.N.Y. Dec. 15, 2023), ECF No. 62. In March 2025, based on a stipulated record, the district court granted the Attorney General’s motion for summary judgment as to the defendants’ liability under the FACE Act and New York Clinic Access Act, with the remedy yet to be determined. *See New York ex rel. James v. Red Rose Rescue*, 771 F. Supp. 3d 311 (S.D.N.Y. 2025).

2. Petitioners are members of Red Rose Rescue residing in Michigan. They filed this action in the U.S. District Court for the Northern District of New York in July 2023. Their complaint is based on the above-quoted statements made by the Attorney General during her June 2023 press conference. The complaint asserts that these statements deterred the exercise of petitioners' freedom of speech and freedom of association in violation of the First Amendment, and targeted petitioners for defamatory and disfavored treatment on account of their religious views in violation of the Fourteenth Amendment's Equal Protection Clause. The complaint also alleges that the Attorney General's statements constitute defamation per se under New York law because those statements "falsely accused [petitioners] of having committed the serious crime of terrorism." The complaint seeks declaratory and injunctive relief as well as damages.

The Attorney General moved to dismiss petitioners' constitutional claims for lack of standing and petitioners' defamation claim for failure to state a claim. The district court granted this motion. The court first held that petitioners failed to allege any concrete harm traceable to the Attorney General's statements, and thus lacked standing to assert their constitutional claims. Pet. App. 15a-26a. The court next held that petitioners failed to plausibly allege defamation because the Attorney General's references to terrorism during her press conference were statements of opinion that are not actionable under New York law. Pet. App. 32a-40a. Accordingly, the district court dismissed the complaint.

3. The Second Circuit affirmed the dismissal of petitioners' complaint. First, the court agreed with the district court that petitioners lacked standing to assert their constitutional claims. Citing *Laird v. Tatum*, 408

U.S. 1, 13-14 (1972), the Second Circuit explained that petitioners' allegations of a subjective chilling effect did not suffice to demonstrate a concrete harm. Pet. App. 4a. The Second Circuit further explained that petitioners "alleged no facts to support their conclusory assertion of reputational harm." Pet. App. 5a.

Next, the Second Circuit agreed with the district court that petitioners failed to plausibly allege defamation under New York law. The court explained that "[o]nly false statements of fact are actionable as defamation." Pet. App. 6a (citing *Gross v. N.Y. Times Co.*, 82 N.Y.2d 146, 151 (1993)). Based on the allegations in the complaint, the court concluded that the Attorney General's use of the words "terrorism" and "terrorist" during her press conference could not reasonably be viewed as statements of fact. Rather, the Attorney General used such "rhetorical hyperbole" in order "to express an opinion" about the activities of Red Rose Rescue. Pet. App. 7a. In analyzing petitioners' defamation claim, the Second Circuit applied New York State substantive law; it did not address, let alone decide, any issue of federal law.

The Second Circuit denied rehearing. Pet. App. 46a-47a. Petitioners now seek certiorari on both their federal constitutional claims and their state defamation claim.

REASONS FOR DENYING THE PETITION

Certiorari is not warranted to review either petitioners’ constitutional claims or their defamation claim. The Second Circuit affirmed the dismissal of petitioners’ constitutional claims under well settled principles of standing, and petitioners point to no novel question of law or split in authority implicated by the dismissal of those claims. Moreover, the dismissal of petitioners’ defamation claim raises no question of federal law for this Court to review.

I. THE DISMISSAL OF PETITIONERS’ CONSTITUTIONAL CLAIMS ACCORDS WITH SETTLED LAW AND DOES NOT IMPLICATE ANY SPLIT IN AUTHORITY.

Petitioners’ constitutional claims do not warrant this Court’s review. In affirming the dismissal of those claims for lack of standing, the Second Circuit merely applied settled law to the facts alleged in the complaint. Contrary to petitioners’ argument, the Second Circuit’s decision does not conflict with this Court’s precedent or other circuit authority.

1. In order to bring a federal lawsuit challenging government action as unconstitutional a plaintiff must plead and prove standing as a threshold jurisdictional matter. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish Article III standing, a plaintiff must show (1) an injury in fact, which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) that it is likely the injury will be redressed by a favorable decision. *Id.* at 560-61; *see also Diamond Alt. Energy, LLC v. Env’tl. Prot. Agency*, 145 S. Ct. 2121, 2133 (2025).

A plaintiff who relies for standing on the claim that government action is chilling the exercise of First Amendment rights must show a “specific present objective harm or a threat of specific future harm.” *Laird v. Tatum*, 408 U.S. 1, 14 (1972). “Allegations of a subjective ‘chill’ are not an adequate substitute” for purposes of demonstrating injury-in-fact. *Id.* at 13-14. A plaintiff must show something more, such as a concrete injury to the plaintiff’s reputation. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 433-39 (2021); *Meese v. Keene*, 481 U.S. 465, 473-74 (1987); *Gully v. Nat’l Credit Union Admin. Bd.*, 341 F.3d 155, 161-62 (2d Cir. 2003). At the pleadings stage, a plaintiff “must ‘clearly allege facts demonstrating’” such a concrete injury. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

2. The Second Circuit correctly applied this Court’s precedent on Article III standing and pleading standards to the facts alleged in the complaint. The complaint alleges that the Attorney General’s statements about the activities of certain nonparty members of Red Rose Rescue in New York had “a chilling effect on [petitioners’] rights to freedom of speech and expressive association.” The complaint also alleges that the statements “tarnished [petitioners’] public reputation.”

The Second Circuit first held that petitioners’ allegations of a subjective chill on their exercise of First Amendment rights did not suffice to demonstrate injury-in-fact. Pet. App. 4a (citing *Laird*, 408 U.S. at 13-14). Petitioners do not appear to contest that holding.

The Second Circuit next held that petitioners’ allegations of reputational harm were too conclusory to support standing. Pet. App. 5a. Indeed, the Attorney General did not even mention petitioners or any of their

activities during the press conference. Nor did she formally designate Red Rose Rescue as a terrorist group. Rather, the Attorney General clarified during her press conference that she referred to Red Rose Rescue as a terrorist group because of certain members' activities in New York State. As the Second Circuit noted, "[i]t is not at all apparent how these statements about the conduct of *other* Red Rose Rescue activists, and James's characterization of the organization in light of that conduct, have injured [*petitioners*] reputations simply by virtue of their association with Red Rose Rescue." Pet. App. 5a. Nor did petitioners allege any facts "to support their conclusory assertion of reputational harm." Pet. App. 5a. The Second Circuit thus correctly concluded that petitioners lacked standing to assert their constitutional claims against the Attorney General.

3. The Second Circuit's case-specific application of well settled law does not warrant this Court's review. The court below did not hold that reputational injury can *never* suffice to demonstrate injury-in-fact.¹ The court instead held that petitioners' vague and conclusory allegations of reputational harm did not "nudge[] their claims across the line from conceivable to plausible." Pet. App. 5a (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). That decision below does not implicate any question of law meriting this Court's review.

Nor does the Second Circuit's decision conflict with any decisions of this Court or any other circuit. Unlike petitioners here, the plaintiffs in the cases cited by petitioners were able to demonstrate reputational harm

¹ As petitioners note (at 12), this Court and others have recognized that reputational harm is a cognizable injury for purposes of Article III standing. The Second Circuit has consistently adhered to this longstanding rule. See *Gully*, 341 F.3d at 161-62.

either with evidence or with nonconclusory allegations. See *Keene*, 481 U.S. at 474; *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 140-41 (1951); *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 712 (6th Cir. 2015); *Foretich v. United States*, 351 F.3d 1198, 1210 (D.C. Cir. 2003).

Thus, in *Keene*, this Court held that the plaintiff had standing to challenge the Department of Justice's designation of certain foreign films as political propaganda. 481 U.S. at 473. The plaintiff was a politician who wished to exhibit those films. *Id.* at 467-68. To demonstrate the reputational harm he would suffer from doing so, the plaintiff "submitted detailed affidavits, including one describing the results of an opinion poll and another containing the views of an experienced political analyst." 481 U.S. at 473-74. As the Court explained, the plaintiff's affidavits "support[ed] the conclusion that his exhibition of films that have been classified as 'political propaganda' by the Department of Justice would substantially harm his chances for reelection and would adversely affect his reputation in the community." *Id.* at 474. This showing of reputational harm sufficed to demonstrate injury-in-fact.

Likewise, in *Joint Anti-Fascist Refugee Committee*, this Court held that groups formally designated as communist by the U.S. Attorney General had standing to challenge those designations. 341 U.S. at 140-41. The groups alleged numerous concrete harms caused by damage to their reputations, including reduced contributions, loss of membership, and their members' loss of employment. *Id.* at 131-35. These alleged reputational harms sufficed to show that the groups had a legally cognizable interest in challenging the designations.

In *Parsons*, the Sixth Circuit held that the plaintiffs, who were members of a group called the Juggalos, had standing to challenge a Department of Justice report identifying the Juggalos as a criminal gang. 801 F.3d at 712. The plaintiffs alleged that because of their association with the Juggalos, they had been subject to “allegedly improper stops, detentions, interrogations, searches, denial of employment, and interference with contractual relations.” *Id.* at 712; *see also id.* at 707-09. These “concrete reputational injuries” satisfied the plaintiffs’ burden of demonstrating injury-in-fact at the pleadings stage. *Id.* at 712.

Similarly, in *Foretich*, the D.C. Circuit held that the plaintiff had standing to challenge legislation—the Elizabeth Morgan Act, named for the plaintiff’s daughter—because there was “no serious doubt that [the plaintiff] suffered harm to his reputation as a result of this Act.” 351 F.3d at 1211-12. That legislation had the effect of depriving the plaintiff of custody over his daughter based on allegations of sexual abuse. *Id.* at 1207-08. The plaintiff submitted an “unrefuted affidavit” describing “harassment by the media, estrangement from his neighbors, and loss of business and professional opportunities” that “resulted directly from the congressional determination that he had abused his daughter.” *Id.* at 1211. “This alleged injury to [the plaintiff’s] reputation [was] a concrete and direct result of the legislation,” and thus satisfied the injury-in-fact requirement. *Id.* at 1214.

Unlike the plaintiffs in *Keene* and *Foretich*, petitioners here did not submit any evidence demonstrating concrete reputational harm. And unlike the plaintiffs in *Joint Anti-Fascist Refugee Committee* and *Parsons*, petitioners’ allegations of harm are not tied to any official designation by a government body. Their asserted reputational harm is instead alleged to arise from the Attor-

ney General’s off-hand remarks about the activities of *other* Red Rose Rescue members. That allegation of harm is simply too vague and conclusory to demonstrate the injury-in-fact that is required for standing. Thus, the Second Circuit’s decision affirming the dismissal of petitioners’ constitutional claims for lack of standing is consistent with the authority cited by petitioners.²

II. THE DISMISSAL OF PETITIONERS’ DEFAMATION CLAIM RESTS ON AN INDEPENDENT STATE GROUND THAT DOES NOT IMPLICATE ANY FEDERAL QUESTION.

Petitioners’ defamation claim presents no federal question for this Court to review. Petitioners asserted their defamation claim under New York law. *See* Pet. App. 12a. And the Second Circuit affirmed the dismissal of that claim based on New York law. Pet. App. 6a-7a. Citing *Gross v. New York Times Co.*, 82 N.Y.2d 146, 151 (1993), the court held that the Attorney General’s references to terrorism during her press conference were statements of opinion, which are nonactionable under New York law. This Court should not grant certiorari to

² Nor does the Second Circuit’s decision in this case conflict with that court’s unpublished opinion in *Oneida Indian Nation v. U.S. Department of the Interior*, 789 F. App’x 271 (2d Cir. 2019), cited by petitioners (Pet. 9-11). First, this Court does not ordinarily sit to resolve alleged conflicts within a single circuit. *See* S. Ct. Rule 10. In any event, there is no such conflict here. The court in *Oneida* rejected the Oneida Nation’s theory of standing based on reputational harm because the defendant agency had “said nothing about the New York Oneidas,” and there was “no allegation that anyone now views the New York Oneidas as somehow inferior in light of [the agency’s] actions.” 789 F. App’x at 277-78. The Second Circuit’s decision affirming the dismissal of the Oneida Nation’s claim for lack of standing is thus entirely consistent with the Second Circuit’s decision in this case.

review whether the Second Circuit correctly applied New York law to the facts alleged in petitioners' complaint.

Petitioners' attempt to inject a First Amendment question into the case at this late stage (Pet. 19) should be rejected for two reasons. First, the Attorney General did not raise the defense that her statements were protected by the First Amendment, and neither of the courts below passed on that issue. Because this Court is "a court of review, not of first view," the Court should not grant certiorari to review this question raised for the first time in the petition. *Moody v. NetChoice, LLC*, 603 U.S. 707, 726 (2024) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005)).

Second, the decision below rests on an independent state ground that does not implicate any First Amendment question. As the New York Court of Appeals noted in *Gross*, the test for determining whether a statement of opinion is nonactionable under New York law "is more flexible and is decidedly more protective of 'the cherished constitutional guarantee of free speech'" than the equivalent test under the First Amendment. 82 N.Y.2d at 152 (quoting *Immuno AG. v. Moor-Jankowski*, 77 N.Y.2d 235, 256 (1991), and contrasting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-21 (1990)). Because petitioners' defamation claim was dismissed on the independent state law ground that the challenged statements are not actionable under New York's law of defamation, the defamation claim does not present any First Amendment issue for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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